



Order under Subsection 30 & 31 Residential Tenancies Act, 2006

Citation: Guzzo v 285 Melvin Ave Apartments LTD, 2023 ONLTB 81811

Date: 2023-12-22

File Number: LTB-T-000830-22

In the matter of: 104, 285 MELVIN AVE
HAMILTON ON L8H2K4

Between: Margaret Guzzo Tenant

And

285 Melvin Ave Apartments LTD Landlord

Margaret Guzzo (the 'Tenant') applied for an order determining that 285 Melvin Ave Apartments LTD (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards and harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on November 30, 2023.

Only the Tenant and the Tenant's Legal Representative Joseph Kazubek attended the hearing.

As of 1:43 p.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Procedural History:

1. This application was before the Board on January 23, 2023, and adjourned at the Landlord's request. One of the Landlord's witnesses was unable to attend due to illness. I granted the adjournment, as the witness was essential to the Landlord's rebuttal evidence.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities the allegations contained in their T6 application.
2. The Tenants' allegations contained in the T2 application mirrored their allegation in the T6 application. Therefore, based on the Kienapple theory (Kienapple v R., 1975 SCR 729), the Tenants' T2 application is dismissed.
3. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the rental unit or residential complex and failed to comply with health and safety or housing or maintenance standards. The Tenant stated they notified the Landlord about their maintenance concerns on or about October 21, 2020. The Tenant stated that:
 - the back door of the building was being left open by the Landlord's workers and this allowed rats to enter the building and rental units
 - the building has not been treated properly for cockroaches and the cockroaches have been moving from unit to unit
 - the drains from other units back up and the Tenants' sink/toilet fills with dirty dish water and suds
 - daily the Tenant catches mice
 - the Tenant had an outstanding work order from February 20, 2021 which had just been completed on December 17, 2022. But the Tenant contends she could not use her bedroom closet because of the water damage
4. There appeared to be 3 issues in this application relating to mice/cockroach issues, closet/drain issues, and back door being left open.

Mice/Cockroach Issues

5. The Tenant testified that on or about September 18, 2021, she seen her first mouse. She contacted the superintendent 'Jack' and he provided her with sticky paper. On or about October 8, 2021, the Tenant caught her first mouse.
6. The Tenant provided testimony that this pattern of catching mice repeated on October 12, 2021, November 30, 2021, December 7,8,9, 11,14,16,and 17, 2021. The Tenant stated she has a gap in her evidence, as in January 2022, her phone was damaged, and she was unable to retrieve her notes. She did state the behaviour about her catching mice continued into April 2022.
7. On April 28, 2022, the Tenant caught another mouse. The Tenant caught mice on the following dates:
 - May 9, 13, 26, 27, 2022

- June 11, 29, 2022
 - July 17, 28 2022
 - August 23, 2022
8. I will note each time the Tenant caught a mouse, the Landlord did provide the Tenant with a sticky pad to assist the Tenant.
9. The Tenants stated that on November 15, 2021, one of the neighbouring Tenants was spraying for cockroaches. On November 28, 2021, the Tenant saw a cockroach that came under her entrance door. In both incidents, the Tenant claims to have told the superintendent 'Jack'.
10. Additionally, the Tenant testified to observing cockroaches in her rental unit on the following days:
- December 25, 2021
 - January 2, 2022

Closet / Drain Issues

11. The Tenant testified that the Landlord had an outstanding work order from February 20, 2021 which had just been completed on December 17, 2022. But the Tenant contends she could not use her bedroom closet because of the water damage. Her belongings had to be stored in the kitchen and living room area.
12. The Tenant stated that on November 9, 2021, she came home to find studs all over her kitchen counter and floor. She immediately contacted 'Jack' to advise him of this issue.
13. The Tenant testified this occurred a few more times and continues to happen. She testified and provided pictures of her toilet full of suds, this happened on November 9 and 18, 2021.

Back door being left open

14. The Tenant gave testimony that the back door of the building was being left open by the Landlord's workers and this allowed mice/rats to enter the building and rental units. It dated back to April 2021.
15. The Tenant contends that anytime work needs to be done at the residential complex, workers are propping the back door open. The Tenant presented evidence that between August 15 through August 18, 2022, this behaviour was continuing. This allowed mice and rats to enter the building, as the door was propped open "all hours of the day."
16. In *Onyskiw v. CJM Property Management Ltd.*, [2016 ONCA 477](#), the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance

obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

17. In this case, I am satisfied on a balance of probabilities, based on the uncontradicted evidence, I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the rental unit or residential complex and failed to comply with health and safety or housing or maintenance standards.

Remedies

18. Therefore, I find that a rent abatement of \$1,897.67 is appropriate in the circumstances.

It is ordered that:

1. The Landlord shall pay the Tenant is **\$1,945.67**. This amount represents:
 - \$1,897.67 for a rent abatement.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by January 2, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by January 2, 2024, the Landlord will owe interest. This will be simple interest calculated from January 3, 2024 at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by January 2, 2024, the Tenant may recover this amount by deducting the amount from the rent owing for the month(s) until there is no longer any money owing.

December 22, 2023

Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Anthony Bruno

Member, Landlord and Tenant Board

Date

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.